

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF ROCKLAND

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In the Matter of the Petition of  
CONGREGATION OF ECHO RIDGE,

Petitioner,

To commence the statutory time period  
for appeals as of right (CPLR 5513[a]),  
you are advised to serve a copy of this  
order, with notice of entry, upon all  
parties.

-against-

## DECISION &amp; ORDER

VILLAGE OF AIRMONT, VILLAGE OF AIRMONT  
BUILDING DEPARTMENT and VILLAGE OF  
AIRMONT ZONING BOARD OF APPEALS,

Index No: 034867/2018 E

Respondents.

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules.

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HON. ROLF M. THORSEN, A.J.S.C.

Petitioner Congregation of Echo Ridge commenced the within combined Article 78 proceeding/declaratory judgment action presumably seeking a determination on the issue of whether Respondents failed to perform a duty enjoined upon it by law, i.e., failing to render a determination on Petitioner's amended application "to coordinate two tax lots into one parking plan." Respondents move to dismiss the Petition.<sup>1</sup> The Court has considered the following papers:

1. Notice of Petition, Verified Petition and Exhibits A through E attached thereto;
2. Respondents' Notice of Motion to Dismiss, Affirmation in Support and Exhibit A attached thereto, Certified Transcript of Record (Exhibits 1 through 10) and Memorandum of Law;
3. Petitioner's Affirmation in Opposition and Exhibit A attached thereto; and

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<sup>1</sup> Although the Request for Judicial Intervention filed by Petitioner only indicated that the within action was an Article 78 proceeding, it is clear from the relief sought that Petitioner's are also seeking a declaratory judgment. In addition, a proceeding brought under Article 78 is limited to the objections that can be raised, see, CPLR §7803, and Petitioner has failed to cite to the specific type of objection for which the within Article 78 proceeding is based.

## 4. Respondents' Reply Brief in Support of Motion to Dismiss.

By way of background, in 2014, Petitioner sought and obtained a building permit to construct a house of worship and parking lot at 3 Echo Ridge Road in the Village of Airmont. When Petitioner thereafter obtained the adjoining lot at 1 Echo Ridge Road, Petitioner submitted a revised application that revamped the proposed parking lot. Due to the fact that Respondent had enacted a moratorium on all building projects in the Village, Respondent returned Petitioner's application and advised Plaintiff to seek an exemption from the Village Board with respect to the moratorium. Petitioner contended that because it's application was exempt from the moratorium, it was not required to obtain an exception from the Village Board and the within proceeding ensued.

In its Verified Petition, Petitioner alleges two causes of action. The first cause of action alleges that, pursuant to Village of Airmont Zoning Code §89-4, the Building Inspector must either approve or disapprove an application for a building permit and that, applied here, Petitioners' application was returned to it without a determination having been made in violation of the zoning code. In its second cause of action, Petitioners allege that Respondents failed to issue a determination in accordance with Village of Airmont Zoning Code §210-154 which requires all determinations by the Building Inspector to be reviewed by the Zoning Board of Appeals (hereinafter "the ZBA"). Specifically, Petitioner contends that the ZBA should have reviewed whether the Building Inspector's return of Petitioner's application without rendering a determination on the application, i.e., either granting or denying it, was improper. Respondents now move to dismiss the Petition on the grounds that (1) Petitioner failed to exhaust its administrative remedies and (2) the relief sought by Petitioner has been rendered moot as a result of the moratorium having expired.

To begin, the Court agrees with Respondents that Petitioner was required to obtain an exception from the moratorium from the Village Board pursuant to Local Law No. 1 of 2017. See, Exhibit 1 attached to the Certified Transcript of Record. It is well settled that "a zoning code must be construed according to the words used in their ordinary meaning." Baker v. Town of Islip Zoning Bd. of Appeals, 20 A.D.3d 522, 524 (2d Dept. 2005). Contrary to Petitioner's reading of the moratorium law, the determination of whether an applicant was exempt from the moratorium law was not to be made by the applicant but rather by the Village Board. Thus, although Respondents advised Petitioner to seek a determination from the Village Board as to whether it was exempt from the moratorium, Petitioner failed to do so and therefore failed to

exhaust its administrative remedies.<sup>2</sup>

Moreover, once the moratorium expired in September 2018, while the within proceeding was pending, the relief sought herein was rendered moot. See, Lenape Resources, Inc. v. Town of Avon, 121 A.D.3d 1591 (4<sup>th</sup> Dept. 2014). Although Petitioner contends that it was "Respondents' attempts to impose the moratorium on Petitioners" coupled with Respondents' failure to recognize that Petitioner was exempt from the moratorium are what caused Petitioner's "damages," this Court finds that it was Petitioner's own determination that it was exempt from the moratorium that led Petitioner to where it is today, i.e., left without a determination on its application to coordinate the two tax lots into one parking lot.

Based on the foregoing, it is hereby

ORDERED that Respondents' motion to dismiss is granted; and it is further

ORDERED that the Petition is denied and the proceeding is dismissed.

The foregoing constitutes the Decision and Order of this Court.

E N T E R

Dated: January 16, 2019  
New City, New York



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HON. ROLF M. THORSEN  
Acting Supreme Court Justice

TO: NYSCEF

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<sup>2</sup> "It is hornbook law that one who objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in a court of law." Watergate II Apartments v. Buffalo Sewer Authority, 46 N.Y.2d 52, 57 (1978). Had Petitioner applied to the Village Board for an exemption from the moratorium law and been denied, then Petitioner could have brought an Article 78 proceeding challenging that determination.